



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 28, 2012

Ms. Maria Gonzalez  
City Secretary  
City of Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489

OR2012-19135

Dear Ms. Gonzalez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 472095.

The Missouri City Police Department (the "department") received a request for a named individual's personnel file. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.119, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . , or offense[.]"

*See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, we find the department must withhold the W-4 forms we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.<sup>1</sup>

The remaining information contains a L-3 Declaration of Psychological and Emotional Health form required by the Texas Commission on Law Enforcement Officers Standards and Education (“TCLEOSE”). This form is confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code and provides the following:

(a) [TCLEOSE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Thus, the department must withhold the L-3 declaration we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.<sup>2</sup> However, the department may not withhold any portion of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 1701.306.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the information we have marked constitutes confidential CHRI, which the department must withhold under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, this office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets,

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

bills, and credit history), 455 at 9 (1987) (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (scope of public employee privacy is narrow).*

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.<sup>4</sup> However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate concern to the public. Consequently, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) of the Government Code exempts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we agree the department must withhold the dates of birth you have marked under section 552.102(a) of the Government Code.

Section 552.108(b)(1) of the Government Code exempts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); *Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989)*. In *Open Records Decision No. 506 (1988)*, this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

numbers assigned to county officials and employees with specific law enforcement responsibilities.” Open Records Decision No. 506 at 2 (1988). We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* You assert that the release of the pager number of the named officer would interfere with law enforcement. Based on your representations and our review of the information at issue, we conclude that the department may withhold the pager number of the named officer you have marked under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Gov’t Code § 552.117(a)(2). But a cellular telephone number provided to an employee at public expense may not be withheld under section 552.117. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular mobile phone numbers provided and paid for by governmental body and intended for official use). We note some of the information you seek to withhold under section 552.117 does not consist of an officer’s home address, home telephone number, emergency contact information, social security number, or family member information. Therefore, the department may not withhold this information, which we have marked for release, on that ground. We agree the department must withhold the remaining information you have marked, as well as the additional information we have marked, under section 552.117(a)(2).<sup>5</sup> However, the department may only withhold the cellular telephone number marked under section 552.117(a)(2) if it was not provided to the officer at issue at public expense.

Section 552.119 of the Government Code provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. After review of your arguments, we find you have not demonstrated, and it is not apparent from our review of the submitted information, that release of the photographs at issue would endanger the life or physical safety of the peace officer depicted. Therefore the department may not withhold the submitted photographs from release under section 552.119.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the department must withhold the driver's license information we have marked in the remaining information under section 552.130 of the Government Code. However, the remaining information you have marked does not consist of motor vehicle record information subject to section 552.130 of the Government Code. Therefore, the department may not withhold the remaining information at issue under section 552.130.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). Therefore, the department must withhold the e-mail address you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their disclosure.

In summary, the department must withhold (1) the W-4 forms we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, (2) the L-3 declaration we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, (3) the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code, (4) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (5) the dates of birth you have marked under section 552.102 of the Government Code, (6) the information you have marked, with the exception of the information we have marked for release, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code, (7) the driver's license information we have

marked under section 552.130 of the Government Code, and (8) the e-mail address you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their disclosure. The department may withhold the pager number you have marked under section 552.108(b)(1) of the Government code. The remaining information must be released.<sup>6</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 472095

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>6</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code, L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, direct deposit authorization forms under section 552.101 in conjunction with common-law privacy, and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.